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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 SHANEL K. DUNCAN,

12 v.
13 Plaintiff,

14 ALVIN R. ALLEN, et al.,

15 Defendants.

CASE NO. 3:23-CV-5285-MJP-DWC

ORDER DIRECTING SERVICE OF
CIVIL RIGHTS COMPLAINT ON
DEFENDANTS MARTIN AND
RAIDER

16 This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding
17 with this action *pro se* and *in forma pauperis*. On September 19, 2023, the Court granted
18 Plaintiff leave to file an amended complaint. Dkt. 29. On September 26, 2023, Plaintiff filed the
19 Amended Complaint. Dkt. 30. In the Amended Complaint, Plaintiff names Maria Martin and
20 Maria Raider as defendants. *Id.* Defendants Martin and Raider were not served with the
21 Amended Complaint and counsel has not entered an appearance on their behalf. *See* Docket; *also*
22 Dkt. 35-1 (defendants did not file the motion to dismiss on behalf of Defendants Martin or
23 Raider). Plaintiff has now filed a Motion requesting the Court serve Defendants Martin and
24 Raider. Dkt. 43.

ORDER DIRECTING SERVICE OF CIVIL
RIGHTS COMPLAINT ON DEFENDANTS
MARTIN AND RAIDER - 1

1 The record reflects Defendants Martin and Raider, through inadvertence, were not served.
2 As Defendants have proceeded on the Amended Complaint, the Court finds it appropriate to
3 serve Defendants Martin and Raider. Accordingly, Plaintiff's Motion (Dkt. 43) is GRANTED
4 and the Court ORDERS as follows:

5 (1) Service by Clerk

6 The Clerk is directed to send the following to Defendants Maria Martin and Maria Raider
7 by first class mail: a copy of plaintiff's amended complaint (Dkt. 30), a copy of this Order, two
8 copies of the notice of lawsuit and request for waiver of service of summons, a waiver of service
9 of summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.

10 (2) Response Required

11 Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of
12 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**
13 **days** after the date designated on the notice of lawsuit to file and serve an answer to the
14 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

15 A defendant who fails to timely return the signed waiver will be personally served with a
16 summons and complaint, and may be required to pay the full costs of such service, pursuant to
17 Rule 4(d)(2) of the Federal Rules of Civil Procedure.

18 (3) Filing and Service by Parties, Generally

19 All attorneys admitted to practice before this Court are required to file documents
20 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
21 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
22 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand
23 corner the name of the magistrate judge to whom the document is directed.

1 Any document filed with the Court must be accompanied by proof that it has been served
2 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs
3 subject to the Court's E-Filing Initiative shall indicate the date the document is submitted for e-
4 filing as the date of service.

5 (4) Non-State Defendants

6 As a registered user of the Court's electronic filing system, you must accept electronic
7 service of all court filings (**except** original service of a complaint) by prisoner litigants housed at
8 facilities actively engaged in the Prisoner E-Filing Initiative. Prisoner litigants incarcerated at
9 facilities actively engaged in the Prisoner E-Filing Initiative are no longer required to serve their
10 court filings on the Court or defendants by mail. Service by mail of your court filings to prison
11 litigants housed in facilities actively engaged in the Prisoner E-Filing Initiative is also no longer
12 required.

13 (5) Motions, Generally

14 Any request for court action shall be set forth in a motion, properly filed and served.
15 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
16 part of the motion itself and not in a separate document. The motion shall include in its caption
17 (immediately below the title of the motion) a designation of the date the motion is to be noted for
18 consideration upon the Court's motion calendar.

19 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
20 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
21 motions for default, requests for the clerk to enter default judgment, and motions for the court to
22 enter default judgment where the opposing party has not appeared shall be noted for
23 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions

1 shall be noted for consideration no earlier than the third Friday following filing and service of the
2 motion. *See LCR 7(d)(3).* All dispositive motions shall be noted for consideration no earlier
3 than the fourth Friday following filing and service of the motion. *Id.*

4 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
5 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
6 immediately preceding the date designated for consideration of the motion.

7 The party making the motion may file and serve, not later than 11:59 p.m. on the date
8 designated for consideration of the motion, a reply to the opposing party's briefs and affidavits.

9 (6) Motions to Dismiss and Motions for Summary Judgment

10 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
11 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
12 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
13 noted for consideration no earlier than the fourth Friday following filing and service of the
14 motion.

15 Defendants filing motions to dismiss or motions for summary judge are advised that they
16 MUST serve *Rand* and *Wyatt* notices concurrently with motions to dismiss and motions for
17 summary judgment so that *pro se* prisoner plaintiffs will have fair, timely and adequate notice of
18 what is required of them in order to oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941
19 (9th Cir. 2012). The Ninth Circuit has set forth model language for such notices:

20 A motion for summary judgment under Rule 56 of the Federal Rules of Civil
21 Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for summary
23 judgment. Generally, summary judgment must be granted when there is no genuine
24 issue of material fact – that is, if there is no real dispute about any fact that would
affect the result of your case, the party who asked for summary judgment is entitled
to judgment as a matter of law, which will end your case. When a party you are

suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, **you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial.** If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added); see *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003) (extending the fair notice requirement to motions to dismiss for failure to exhaust administrative remedies).

Defendants who fail to file and serve the required *Rand* and *Wyatt* notices on plaintiff may have their motion stricken from the Court's calendar with leave to re-file.

(7) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(8) The Clerk is directed to send copies of this Order to plaintiff. The Clerk is further directed send a copy of this Order and a courtesy copy of plaintiff's amended complaint (Dkt. 30) to the Pierce County Prosecutor's Office, by first-class mail.

Dated this 29th day of February, 2024.

Dw Christel

David W. Christel
Chief United States Magistrate Judge